

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned On Brief December 29, 2000

JAMES P. BLOCK v. DOCTOR R. CRANTS, ET AL.

**Direct Appeal from the Circuit Court for Hardeman County
No. 9238 Jon Kerry Blackwood, Judge**

No. W2000-01917-COA-R3-CV - Filed April 30, 2001

The plaintiff filed suit for injuries sustained in a fall while he was incarcerated in a correctional facility operated by Corrections Corporation of America. Defendants filed a motion to dismiss the complaint on the basis Plaintiff failed to file an affidavit of inability to pay as required by Tenn. Code Ann. § 41-21-805 and failure to comply with section 41-21-806 regarding grievances. The motion was granted. We reverse, having determined that the Plaintiff is not an “inmate” within the statutory definition.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed; and
Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY K. LILLARD, J., joined.

James P. Block, *Pro se*.

Tom Anderson, Jackson, Tennessee, for the Appellees, Percy H. Pitzer and Earl Bowden.

OPINION

The Plaintiff, James P. Block, brought an action in tort against the Defendants, agents of Corrections Corporation of America (CCA), alleging that, while confined at the Whiteville Correctional Facility (WCF) in Hardeman County, he was injured when he slipped and fell on a wet floor. It is alleged that his injuries were due to the negligence of one or more of the named Defendants. Mr. Block also filed a Uniform Civil Affidavit of Indigence whereupon the trial court entered an order allowing him to file the case on a pauper’s oath.

The complaint identifies Doctor R. Crants as Chairman and C.E.O. of Corrections Corporation of America, Percy H. Pitzer as Warden at the WCF, Earl Bowden as maintenance supervisor at the facility and Brent Mosley as past unit manager of “F” unit, “A” pod at WCF. A

notice of appearance was filed by counsel for defendants Pitzer and Bowden as well as a motion for extension of time and a motion to dismiss the complaint.¹

The motion to dismiss filed in behalf of defendants Pitzer and Bowden was on the basis that the Plaintiff failed to comply with sections 41-21-805 and 41-21-806 of the Tennessee Code Annotated. The trial court granted the motion to dismiss and this appeal resulted.

As this court stated recently in *Williams v. Bell*, 37 S.W.3d 477 (Tenn. Ct. App. 2000):

Tenn. Code Ann. § 41-21-801, et seq., imposes a duty upon inmates who file claims in forma pauperis to submit affidavits documenting their prior history of litigation, before a trial court can rule on their current claims. One purpose of this statutory scheme is to bar inmates who have filed malicious or frivolous claims from filing any further lawsuits until they have paid the costs that have accrued from those prior claims. Tenn. Code Ann. § 41-21-812.

See id. at 479.

Tennessee Code Annotated § 41-21-805 provides as follows:

(a) Any inmate who files a claim with an affidavit of inability to pay costs shall file a separate affidavit with the following information:

(1) A complete list of every lawsuit or claim previously file by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and

(2) For each claim or action listed in subsection (a):

(A) The operative facts for which relief was sought;

(B) The case name, case number and court in which the suit or claim was filed;

(C) The legal theory on which the relief sought was based;

(D) The identification of each party named in the action; and

(E) The final result of the action, including dismissal as frivolous or malicious under this part or otherwise.

(b) If the affidavit filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit must state the date of the final order affirming the dismissal.

(c) The affidavit must be accompanied by a current certified copy of the inmate's trust account statement.

¹The brief filed in behalf of appellees Pitzer and Bowden states that they were both served with process. We are unable to determine from the record before us whether defendants Crants and Mosley were served with process.

The appellant, Mr. Block, contends that he is not an “inmate” as defined in the statute. It is conceded that Mr. Block is a Wisconsin inmate incarcerated at WCF, which is owned and operated by Corrections Corporation of America. It is further conceded by the Appellees that the Wisconsin Department of Corrections contracted with CCA as owner and operator of WCF to house Wisconsin inmates. As a result, Mr. Block is incarcerated at WCF. An inmate is defined generally as “a person confined (as in a prison or hospital).” *Webster’s Ninth New Collegiate Dictionary* 623 (1991). However, with respect to lawsuits by inmates, the General Assembly has specifically defined “inmate” as “a person housed in a facility operated by the department or housed in a county jail.” Tenn. Code Ann. § 41-21-801(4) (1997). “Department” is defined as the department of correction. Tenn. Code Ann. § 41-21-801(3) (1997). Therefore, we are inclined to agree with the appellant that he is not an inmate within the definition of the applicable statute since he is not a “person housed in a facility operated by the department or housed in a county jail.”

The appellees argue that section 41-21-801(4) defines “inmate” as a person housed in a facility operated by the department or housed in a county jail and that the Private Prison Contracting Act of 1986 defines “prison” or “facility” as “any adult institution operated by or under the authority of the department.” *See* Tenn. Code Ann. § 41-24-102(4). We reject this argument because 41-24-102(3) states that “department” means the department of correction. Mr. Block is not in the custody of the Department of Correction. He is incarcerated at WCF by nature of a contract entered into between the state of Wisconsin and CCA. Furthermore, with respect to the statute upon which the motion to dismiss was based, section 41-21-805, “inmate” as contained therein is defined at section 41-21-801(4) as previously discussed.

The second prong of the motion to dismiss was failure of the Plaintiff to comply with the provisions of Tenn. Code Ann. § 41-21-806 which provides as follows:

(a) An inmate who files a claim that is subject to review by the grievance committee established by the department shall file with the court an affidavit stating the date that the grievance was filed and the date the final decision was received by the inmate with a copy of the final decision from the grievance committee.

(b) The court shall dismiss the claim if the inmate fails to file the claim before the thirty-first day after the date the inmate receives the final decision from the grievance committee.

(c) If a claim is filed before the grievance procedure is complete, the court shall stay the proceeding with respect to the claim for a period not to exceed ninety (90) days to permit completion of the grievance procedure.

Attached to the motion to dismiss was a copy of what appears to be a portion of the CCA corporate and facility policy regarding inmate/resident grievance procedures at WCF. We first note that section 41-21-806(a) refers to review by the grievance committee established by the department. As previously noted, section 41-21-801(3) defines “department” as the department of correction.

Furthermore, Appellant contends² that, even if the grievance procedures established by CCA were applicable, the procedures attached to the motion to dismiss were not the grievance procedures in effect at the times pertinent to this action. Thus, if the CCA grievance procedure were applicable, there is a disputed fact as to which procedures were applicable at all times here pertinent and thus a motion to dismiss would not be in order.

For the reasons stated, we reverse the judgment of the trial court granting the motion to dismiss filed in behalf of defendants Percy H. Pitzer and Earl Bowden and remand this case to the trial court for further proceedings consistent with this opinion. Costs of this appeal are taxed to the appellees, Percy H. Pitzer and Earl Bowden, and their surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE

²In his brief, appellee incorporates by reference his “response to defendant’s motion to dismiss.”